

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>
(240) 777-6600

**Case Nos. CU 19-04 and A-6575
PETITION OF FM GROUP INC., d/b/a FRANCISCO LANDSCAPING**

OPINION OF THE BOARD

(Worksession Date: September 4, 2019)
(Effective Date of Resolution: September 25, 2019)

Case No. CU 19-04 is an application for a conditional use pursuant to Section 59-3.5.5 of the Zoning Ordinance, to allow operation of a landscape contractor conditional use at 15400 Holly Grove Road, Silver Spring, Maryland, in the RE-2C Zone. This case was consolidated with Board of Appeals' Case No. A-6575, in which the Petitioner sought a variance from the 50-foot setback requirement for landscape contractors set forth in Section 59-3.5.5.B.2 of the Zoning Ordinance. On July 18, 2019, the Hearing Examiner for Montgomery County issued a combined Report and Decision on Conditional Use and Report and Recommendation on Variance, which denied the proposed conditional use and recommended that the Board deny the associated variance.

The Board of Appeals received a timely request for oral argument on the Report and Decision on Conditional Use and Report and Recommendation on Variance from Sean P. Hughes, Esquire, and Jody S. Kline, Esquire, on behalf of the Petitioner. Mr. Hughes and Mr. Kline asked, in their request, that the Board defer consideration of the associated variance until such time as it considered the conditional use application. At its July 31, 2019, Worksession, the Board agreed to defer consideration of the variance until it considered the conditional use. In addition to the request for oral argument received from counsel, the Board of Appeals received opposition to counsels' request from Patricia Thomas, Judy Mauldin, Mary Hemingway, and Quentin Remein, all of whom asked that they be allowed to participate in oral argument if it were granted.

The subject property is 6.18 acres in size, is unplatted, and is identified as Parcel P066 of the Snowden's Manor Subdivision on Tax Map JS41, located at 15400 Holly Grove Road, Silver Spring, Maryland in the RE-2C Zone.

Decision of the Board:

Oral argument **DENIED**.
Conditional Use Case No. CU 19-04 **DENIED**.
Variance Case No. A-6575 **DENIED**.

Per Section 59-7.3.1.F.1.c of the Zoning Ordinance, a written request for oral argument constitutes an appeal and transfers jurisdiction over the conditional use application from the Hearing Examiner to the Board of Appeals. Per Section 59-7.3.2.A of the Zoning Ordinance, the authority to decide variance applications rests with the Board. The Board considered the Hearing Examiner's July 18, 2019, combined Report and Decision on Conditional Use and Report and Recommendation on Variance at its September 4, 2019 Worksession, along with the request for, and letters of opposition to, oral argument. The Board finds that the record compiled by the Hearing Examiner in both matters is thorough and exhaustive, and that the combined Report and Decision on Conditional Use and Report and Recommendation on Variance contains clear and detailed reasons for denial of both the conditional use and the variance. The Board finds that no further argument is necessary for it to be able to render a decision on these related applications. The Board adopts the Hearing Examiner's July 18, 2019, Report and Decision on Conditional Use and Report and Recommendation on Variance, and denies the proposed conditional use and the requested variance for the reasons set forth therein.

On a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Stanley B. Boyd, Vice Chair, and Jon W. Cook in agreement, and with Bruce Goldensohn not in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the requests for oral argument are **denied**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above, denying the conditional use and requested variance for the reasons set forth in the Hearing Examiner's Report and Decision on Conditional Use and Report and Recommendation on Variance, is adopted as the Resolution required by law as its decision in Case Nos. CU 19-04 and A-6575.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 25th day of July, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered into the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

